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COMMITTEE AGAINST TORTURE

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION

Initial reports of States parties due in 1990

Addendum

AUSTRALIA*

[11 June 1992]

1. During its consideration of Australia's First Report under the Convention Against Torture on 15 November 1991, the Committee Against Torture put certain questions to the Australian delegation. Following are answers to these questions.

Please supply statistics with as much detail as possible concerning the number of refugees who have received rehabilitation treatment arising from acts of torture.

2. Information in response to this question has been obtained from the principal community organizations involved in the rehabilitation of torture victims: The Rehabilitation Trust Unit for Survivors of Torture and Trauma

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* The present document contains replies of the Government of Australia to questions raised by the Committee against Torture at its seventh session during the consideration of the initial report of Australia (CAT/C/19/Add.8) on 15 November 1991 (see CAT/C/SRs. 95 and 96); see also the annual report of the Committee against torture: Official Records of the General Assembly, forty-seventh session, Supplement No. 46 (A/47/46, paras. 181-214).

(TRUSTT) in Queensland; the New South Wales Services for the Treatment and Rehabilitation of Torture and Trauma Survivors (STARTTS); the Victorian Foundation for Survivors of Torture (VFST); and the Torture Rehabilitation and Network Services of the Australian Capital Territory (TRANSACT).

3. The client intake of STARTTS from September 1988 to June 1991 totalled 507, with the majority of clients from El Salvador, Viet Nam, Cambodia, Chile and Afghanistan, in descending order. (This total includes "refugees".)

4. Since its commencement, STARTTS has provided assessment, counselling, group work and community development services to over 500 families. It receives new referrals at the rate of six per week and its current waiting list is six to nine months depending on which community requires services.

5. STARTTS states that not all refugees require specialist treatment and rehabilitation services, but all refugees require good quality assessment and referral services with well-coordinated settlement and monitoring services. The organization was funded on the premise that 10 per cent of refugees would require rehabilitation services as victims of torture. However, studies by other agencies in Sydney indicate that 80 to 100 per cent of some groups is a more reasonable estimate.

6. A total of 513 people have received specific treatment from TRUSTT. Of this figure, 280 were victims of organized violence and 233 were victims of torture. TRUSTT states that a victim of organized violence would be someone who had received numerous death threats, had his or her car and home bombed, but not taken away and held in a clandestine prison and tortured. A victim of torture would be someone who had been arrested, held illegally and tortured for a period extending anything from a day through to a year. Also included in the figures are family members who may not have been the direct recipients of torture/organized violence, but who have been very adversely affected by this and have required treatment in their own right.

7. TRANSACT has given a comparison between May and November 1991 figures to demostrate an increase in the use of its client service, which commenced at the end of April 1991. In May the client contact amounted to 30. This figure increased to 98 in September.

8. The statistics refer only to those clients who have been referred directly to TRANSACT office and do not include clients seen by its network members.

9. From 31 June 1989 to 31 June 1990, a total of 92 referrals representing 185 persons were made to the VFST, with the majority of clients coming from El Salvador, Chile, Viet Nam, Cambodia, East Timor and the Islamic Republic of Iran, in descending order. About 160 new referrals have been received since June 1990 with approximately 80 to 90 per cent of the referrals having refugee status or awaiting refugee status determination.

How many people have been convicted for rape (or the equivalent offence in those States or Territories which now provide for offences described in a different way), and what penalties have been imposed over each of the last three years?

10. There are no court statistics produced on a national basis, and therefore the best that one can do is to estimate the number of convictions from the data obtained from the annual national census of prisoners. This data has been collated into the two statistical tables attached, which show: (a) the sentences handed down for such offences; (b) the terms of imprisonment actually served for the offences.

To what extend is corporal punishment still practised in public and private schools, and under what conditions?

11. While corporal punishment is permitted in both government and non-government schools depending on state laws, in most States its use is implemented only as a last recourse. Western Australia and the Australian Capital Territory have state education laws which prohibit the use of corporal punishment in government schools. Other States, while not actually prohibiting corporal punishment, normally have strict guidelines for government schools on the use of disciplinary measures.

12. The emphasis in many individual schools is on positive reinforcement, with corporal punishment being the least favoured option for dealing with unacceptable behaviour. For example, Northern Territory education policy provides for corporal punishment stating:

> "If in extreme cases, corporal punishment is considered necessary, it should
>
> (a) be kept to a minimum;
>
> (b) not be administered in the presence of other students;
>
> (c) be administered only by the Head Teacher or a senior staff member authorized in writing by the Head Teacher. Staff should be made fully aware of those to whom the Head Teacher has delegated such authority, and that no other person may administer corporal punishment;
>
> (d) be of the normally accepted nature;
>
> (e) be recorded in a book kept specifically for that purpose. The record should show the date, the full name and age of the student, the reason, the nature and the extent of the punishment and the signature of the staff member administering the punishment."

13. As with most other States, parents in the Northern Territory can remove a school's authority to administer corporal punishment to their child. However Northern Territory policy permits schools to "request the parents to take appropriate disciplinary measures themselves" and states that "... if the Head Teacher is not satisfied that appropriate disciplinary measures have been

taken by the parents, the Head Teacher may suspend the student for a period of time not exceeding one month ... or take other appropriate disciplinary action."

14. For the non-governmental sector the picture is a little more complex given the diversity of agencies involved. Schools' principals and the school community are responsible for discipline policy, although schools are subject to common law sanctions with regard to discipline of children. Both the National Council of Independent Schools' Association and the National Catholic Education Commission have advised that approaches to discipline are a matter for individual schools and that they are unable to provide information in any detail.

15. The National Catholic Education Commission has advised that general approaches to discipline and pastoral care in Catholic schools no longer give prominence to corporal punishment as a mode of student management, and that in many schools, there is a clear policy decision which prohibits corporal punishment. As far as the Commission is aware there are no Catholic schools where corporal punishment is a preferred option.

<u>To what extent is electric shock treatment (other than the use of mild shocks in aversion therapy) used in Australian institutions in dealing with mental illness</u>?

16. This information is not collected by Australian Governments on a systematic basis, and information from individual institutions is difficult to obtain. It must be therefore be borne in mind that the following information is not comprehensive.

17. Electro-convulsive therapy (ECT) is used for the treatment of endogenous depression and certain other conditions in New South Wales. Statistics of its usage are not collected but it is estimated by the Health Department that several hundred persons receive ECT each year.

18. The Mental Health Act 1990 governs the use of ECT and rigorous procedures must be complied with in the seeking of informed consent to treatment.

19. In Victoria, ECT may only be performed at a state-operated psychiatric in-patient service or at licensed premises. The patient must consent to treatment and the consent must be informed. The Chief Psychiatrist has statutory responsibility for monitoring the use of ECT. Reports from facilities using ECT are received and the premises of all ECT license holders are regularly inspected.

20. In a random audit of ECT facilities in three major hospitals, it was found that ECT was prescribed treatment for approximately 5 per cent of patients. The results of another review by a major hospital as part of its quality assurance programme revealed equal proportions of voluntary and non-voluntary patients were prescribed ECT as part of their treatment programme.

21. ECT is used in Queensland in the treatment of severe depression, other life-threatening conditions, and for those conditions not responding to other therapies (severe mania, catatonic schizophrenia).

22. No figures on the extent of ECT are kept by the Queensland Health Department. Each psychiatric facility keeps its own records and, at this stage, these are not available to the Commonwealth.

23. Although each psychiatric hospital in South Australia keeps a register regarding the number of times ECT is used and the manner in which it is given, there is no central recording of this by the South Australian Health Commission.

24. ECT requires a patient's informed consent in the Australian Capital Territory. This consent may be withdrawn at any time. If a patient is unable to consent, the court may consent but will not do so against a patient (or family) objection.

25. ECT is used for between 0.5 and 1 per cent of all admissions to Psychiatry Units in the ACT. The rate varies from year to year within this range. There are no separate psychiatric institutions in the ACT and the figures refer to those persons treated in acute psychiatric units attached to general hospitals and other hospital admissions.

26. The Northern Territory government does not keep records on the incidence of ECT in hospitals and psychiatric facilities.

27. Approximately 190 persons each year are given a course of ECT in public hospitals in Western Australia. The Health Department does not have access to the data on ECT given by private psychiatrists in private hospitals.

28. ECT is administered primarily for the treatment of major depression and is only used in situations in which a person fails to respond to other medical treatments or in which the person is at risk of physical harm from his/her illness and requires urgent treatment.

29. The majority of ECT is administered to voluntary patients with their consent. When a person is non-voluntary and not able to give informed consent, ECT is only administered after two psychiatrists have examined the person and are of the opinion that it is clinically necessary in the interests of the person's health and safety.

30. The Tasmanian Health Department does not have access to data on the extent of ECT in Tasmania psychiatric facilities or general hospitals.

31. The Director of Mental Health Services estimates that between 5 and 15 per cent of persons admitted to in-patient units receive ECT.

<u>What procedures are required in each state and territory for non-voluntary admission to institutions for the mentally ill or to prevent a voluntarily admitted person from leaving an institution? What appeal process is available</u>?

32. The different procedures for non-voluntary admission to a psychiatric facility are governed by State and territory mental health legislation. This differs from state to state and is summarized below.

New South Wales

33. The Mental Health Act 1990 provides for the non-voluntary admission of persons to pyschiatric hospitals and units only where there is no less restrictive means of effectively providing necessary treatment.

34. There are approximately four mechanisms:

(a) Certificate of medical practitioner. Following diagnosis by a medical practitioner, a psychiatrist (if the medical practitioner was not a psychiatrist) must examine the person. If the two diagnoses differ, a third psychiatrist conducts a further examination. Persons diagnosed with a mental disorder can be detained for a maximum of three days while those diagnosed with a mental illness must be brought before the magistrate as soon as possible. If the magistrate finds that the person is mentally ill and no other care of a less restrictive kind is appropriate, the person may be detained as a temporary patient for up to three months. Persons have the right of appeal as temporary patients and can appeal to the Mental Health Review Tribunal. The Tribunal is require to review the cases of all detained patients every six months. Decisions of the Tribunal in such cases may be appealed to the NSW Supreme Court;

(b) Written request of relative, friend or welfare officer. Requests are made to the medical superintendent of the hospital who must be satisfied that the situation is an emergency and that access to a medical practitioner is, under the circumstances, dfficult;

(c) Police and court admission. The police may apprehend a person and take him or her to a hospital if they have found the person in a public place and believe that he or she will cause harm to self or others. Similarly, a magistrate can order a person appearing in a court to a hospital for assessment. The magistrate hears each case as soon as possible after admission and magistrates make weekly visits to all psychiatric hospitals and units to enable this to occur. An independent statutory authority - the Mental Health Review Tribunal - is required to assess regularly the case of each detained person. As well, a specialized service has been established within the NSW Legal Aid Commission to provide free legal representation for patients. Should it be necessary to detain a voluntary patient who is wishing to leave hospital, then the procedure for non-voluntary admission described above must be employed.

Victoria

35. A person may be admitted to and detained in a psychiatric in-patient service as a non-voluntary patient only if he or she is mentally ill and is a danger to self or others and cannot receive adequate treatment in a less restrictive setting.

36. There is one mechanism for non-voluntary admission in Victoria: requests from relative, friend, police officer or any other person backed up by a recommendation from a medical practitioner. Following a written request, a

medical practitioner must examine the person prior to issuing a recommendation. Once the person is admitted to hospital, examination by a psychiatrist must occur within 24 hours.

37. The Mental Health Review Board automatically reviews all patient's cases four to six weeks after the person is admitted to hospital. At any time, a person can appeal non-voluntary admission by writing to the Mental Health Review Board, the Chief Psychiatrist, an authorized psychiatrist, a community visitor, the ombudsman or the Health Services Commissioner.

Queensland

38. Mental health legislation provides three potential mechanisms for non-voluntary admission which are summarized below:

(a) Application for admission

(i) Completed by next of kin or Authorized Person;
(ii) Supported by registered medical practitioner;
(iii) Detention for up to 72 hours only;
(iv) Longer detention depends on the advice of another medical practitioner;

(b) Court warrant

(i) Completed by member of public before a court;
(ii) If issued by court, police can detain the person for examination by a registered medical practitioner and an Authorized Person;
(iii) If medical practitioner and Authorized Person agree, person can be admitted to hospital for examination;
(iv) Person can be detained only at advice of independent medical practitioner;

(c) Police admission

(i) If police believe a person is behaving in a way which may lead to self-harm or harm to others and that his behaviour is the result of a mental condition, that person can be admitted to hospital for examination;

(ii) A person can be detained only at advice of independent medical practitioner.

39. There are no provisions in the Queensland Mental Health Act to prevent a voluntarily admitted person from leaving a facility, unless that person has been deemed to be in need of treatment as a non-voluntary patient. A person can appeal non-voluntary admission under the Patient Review Tribunal, chaired by a retired judge, barrister or solicitor eligible for appointment as a district court judge. Members of the Tribunal are from the legal, medical and/or mental health professions and there are representatives from the community on all Tribunals. A person can appeal to the Tribunal at any time. All cases of non-voluntary detention are reviewed by the Tribunal after

detention beyond 21 days. In addition, a person can appeal to Legal Aid, an independent private medical practitioner or psychiatrist, the state ombudsman, Human Rights Commission or the Health Rights Commission.

South Australia

40. Any medical practitioner can write an Order for Detention for a person who is mentally ill and a danger to self or others. Within 24 hours the patient must be reviewed by a specialist psychiatrist. If the Order is confirmed a further 21 days can be added. The person may appeal to the Mental Health Review Tribunal after the first three days.

Australian Capital Territory

41. There are two mechanism for non-voluntary admission in the ACT:

(a) Emergency detention. A registered medical practitioner or mental health officer can admit a person who is mentally ill and posses an immediate and substantial risk of actual bodily harm to self or others, for up to 72 hours;

(b) Treatment order. Detention beyond 72 hours requires the magistrate's court to issue an involuntary treatment order after hearing the application from the registered medical practitioner and the mental health officer, and further detention beyond 28 days requires an order of the Supreme Court.

42. The person has a right of immediate appeal to the magistrate's court under both mechanisms. A non-voluntary patient may initiate an appeal by writing to the General Manager of the ACT Health Service, the Director of Mental Health, an authorized psychiatrist, a community visitor, the ombudsman, the Community Advocate or the clerk of the court. The court reviews all non-voluntary patients' status prior to the conclusion of the initial 21-day detention order, every six months for in-patients and every 12 months for out-patients.

Northern Territory

43. A magistrate can issue a warrant to take a person into custody for up to three days if that person has a mental illness which requires treatment, is incapable of self-care and is likely to cause harm to self or others. Detainment after three days requires the Chief Medical Officer to make an application to a magistrate for an order. Orders do not usually exceed six months.

44. A medical practitioner performing duty in or near a hospital or a member of the police force can take a mentally ill person into custody without a warrant. Within 24 hours, the Chief Medical Officer must make an application to a magistrate for an order.

45. Within three days, the Chief Medical Officer must sight the reports of two independent medical practitioners which agree to treatment for the mentally ill person. Every six months the same process is repeated.

46. Person appearing before the magistrate are entitled to legal representation. A prescribed person (the subject of the order, a relative, a guardian, the Chief Medical Officer or an interested party) may apply to the Supreme Court to review an order.

Western Australia

47. A person can be admitted non-voluntarily into a psychiatric facility under the Mental Health Act on:

(a) An order of a medical practitioner stating that, in his/her opinion, the person appears to be suffering from a mental disorder requiring treatment;

(b) An order of a court before which a person stands charged with an offence, stating that the person is, or may be, suffering from a mental disorder;

(c) An order of the Governor where a person has been found unfit to plead guilty or not guilty on the grounds of insanity in the Supreme Court.

48. In the first two cases a psychiatrist must examine the person within 72 hours to determine whether or not the person should be admitted. In the third, the Governor in Executive Council determines the disposition of the patient.

49. There are a number of avenues of appeal:

(a) Each approved hospital has a Board of Visitors which is appointed by, and directly responsible to, the Minister. The Board hears patient complaints and appeals against detention and may discharge a patient;

(b) Any person may make application to the superintendent for discharge of a patient and the superintendent must make a determination within 72 hours in relation to the patient's discharge;

(c) A patient may make application to the Director of Psychiatric Services for discharge; or

(d) Any person may make application to the Supreme Court for discharge from detention in hospital.

Tasmania

50. Non-voluntary admission is governed by the Tasmanian Mental Health Act 1963. Persons can be admitted on a 3-day, 28-day or 6-month order. Each order requires an application by a relative and a medical practitioner. The 28-day and the 6-month orders require a second medical opinion.